

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

UNITED STATES OF AMERICA,

Plaintiff,

V.

CRISTIAN BERRELLEZA-VERDUZCO,

Defendant.

No. CR12-62RSL

**ORDER DENYING MOTION TO
REDUCE SENTENCE
PURSUANT TO 18 U.S.C. § 3582**

This matter comes before the Court on defendant's pro se motion to reduce his sentence pursuant to 18 U.S.C. § 3582, Dkt. # 1432, which the government opposes, Dkt. # 1434. Having reviewed the parties' briefing and the relevant record, the Court finds as follows.

In April 2013, pursuant to an agreement with the government, Dkt. # 857, defendant pled guilty to a series of drug trafficking crimes: one count of conspiracy to distribute controlled substances (under 21 U.S.C. §§ 841(a)(1), 841(b)(1)(A), & 846); one count of conspiracy to engage in money laundering (under 18 U.S.C. §§ 1956(h), 1956(a)(1)(A)(i), & 1956(a)(1)(B)(i)); one count of conspiracy to interfere with commerce by robbery (under 18 U.S.C. § 1951); one count of conspiracy to possess firearms in furtherance of a drug trafficking crime (under 18 U.S.C. § 924(o)); and one count of possession of a firearm in furtherance of a drug trafficking crime (under 18 U.S.C. § 924(c)). Case No. CR12-62RSL, Dkt. # 852. In September 2014, the Court sentenced defendant to 324 months in custody, followed by five years of supervised

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1 release. Case No. CR12-62RSL, Dkt. # 1317. Defendant timely appealed the Court's order
2 denying his motion to withdraw his plea, and on July 12, 2016, the Ninth Circuit affirmed. Case
3 No. CR12-62RSL, Dkt. # 1421. In August 2016, defendant moved to vacate his sentence under
4 28 U.S.C. § 2255. Dkt. # 1425. The Court denied that motion on November 22, 2016. Case
5 No. C16-1308RSL, Dkt. # 10.

6 On February 13, 2017, defendant filed this motion to reduce his sentence under 18 U.S.C.
7 § 3582. That provision authorizes courts to reduce a previously imposed sentence in light of
8 subsequent amendments to the Sentencing Guidelines. In requesting a sentence reduction,
9 defendant relies on Amendment 788 to the Sentencing Guidelines, which made Amendment 782
10 (reducing the recommended penalties for most drug offenses by lowering the offense levels on
11 the § 2D1.1 Drug Quantity Table) retroactively applicable. But because Amendment 782 does
12 not lower defendant's Sentencing Guidelines range, it cannot provide grounds for reducing
13 defendant's sentence.

14 Specifically, using the 2012 Guidelines Manual, U.S. Sentencing and Probation
15 calculated defendant's base offense level for Counts 1, 2, and 4 as Level 38. Dkt. # 1235, ¶ 58.
16 U.S. Sentencing and Probation then recommended upward adjustments for importation of
17 methamphetamine (+2); money laundering (+2); and leadership (+4). Dkt. # 1235, ¶¶ 60, 62, 64.
18 Thus, defendant's combined adjusted offense level was Level 46. The U.S. Sentencing
19 Guidelines table only goes up to Level 43, and directs that “[a]n offense level of more than 43 is
20 to be treated as an offense level of 43.” U.S.S.G. Ch. 5, Pt. A, cmt. n.2; Dkt. # 1235, ¶ 80. With
21 a Criminal History Category of I, defendant's resulting Sentencing Guidelines range was “Life,”
22 followed by a mandatory consecutive five years' imprisonment for Count 33. Dkt. # 1235,
23 ¶ 100. The Court ultimately varied downward from the Guidelines range and imposed a
24 sentence of 324 months' imprisonment. Dkt. # 1317 at 3.

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1 Amendments 782 and 788 would not lower defendant's Guidelines range, because even
2 with the two-level reduction required by those amendments, defendant's adjusted offense level
3 would be 44 rather than 46. Accordingly, defendant's Guidelines range would still be calculated
4 based on offense level 43 and Criminal History Category I. The Court lacks jurisdiction to
5 reduce a sentence based on a sentencing range that is not lowered by a retroactively applicable
6 Guidelines amendment. See United States v. Wesson, 583 F.3d 728, 730 (9th Cir. 2009).

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8 Accordingly, defendant's motion to reduce his sentence pursuant to 18 U.S.C. § 3582
9 (Dkt. # 1432) is DENIED.

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11 Dated this 25th day of April, 2017.

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14 Robert S. Lasnik
15 United States District Judge

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